ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
C.F. Communications Corp., et al.	EB Docket No. 01-99
Complainants,	File Nos. E-93-43, E-93-44, E-93-45
v.	
Century Telephone of Wisconsin, Inc., et al.	
Defendants	

To: Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO MOTION TO COMPEL FILED
BY COMPLAINANT ASCOM HOLDING, INC.

Carolina Telephone and Telegraph Company, in File No. E-93-43, United Telephone Company of Pennsylvania, in File No. E-93-44, and United Telephone Company of Florida in File No. E-93-45, ("Defendants") by their attorneys and pursuant to Sections 1.323(c) and 1.294 of the Commission's Rules, hereby oppose Ascom Holding, Inc.'s Motion to Compel Responses to Second Set of Interrogatories and Second Set of Requests for the Production of Documents from Defendant Sprint Corporation and Memorandum in Support ("Motion to Compel").

Ascom Holding, Inc. ("Complainant") limits its Motion to Compel to interrogatories 3-4, 8, 20-21, 23 29 and 33 and document requests 5, 12, 15 and 17. As shown herein and in Defendants' answers and objections to these interrogatories and requests, some are not relevant in whole or in part to the issues designated for hearing in the referenced cases and are not likely

to lead to the discovery of relevant information. For the remainder of the questions, Defendants have already provided or offered to provide the requested, relevant information. Accordingly, Complainant's Motion to Compel should be dismissed.

General Objections

Defendants object to all of Complainant's interrogatories and requests to the extent that they ask for information concerning end user common line (EUCL) charges imposed by entities other than the named Defendants on entities other than the named Complainant, and to the extent that they ask for information on telephone lines other than pay telephone lines. These objections were previously upheld in the Memorandum Opinion and Order, FCC 01M-31, released August 8, 2001 (Order), and they should be upheld here as well. Defendants also object to all of Complainant's interrogatories and requests to the extent that they ask for information outside of the time period established in the Order. In the Order, Defendants were required to provide information only during the time period beginning July 20, 1988 for Carolina Telephone and Telegraph Company and United Telephone Company of Florida and August 5, 1988 for United Telephone Company of Pennsylvania and ending when Ascom sold its payphones in or about November 1993. Defendants should only be required to answer Complainant's second interrogatories and document requests, if at all, for the same time period.

Defendants' specific objections to the Complainant's second interrogatories and document requests are detailed below.

Interrogatories 23 and 29 and Document Requests 12 and 15

Complainant argues that interrogatories 23 and 29 and document requests 12 and 15 seek information concerning ANIs and the ANI lists generated in connection with payphone

compensation. Therefore, Complainant argues the information sought is relevant to the hearing issues and reasonably calculated to lead to the discovery of admissible evidence.

Defendants continue to object to the information sought in these questions as overly broad, beyond the scope of this proceeding and duplicative. These questions are overly broad and beyond the scope of this proceeding to the extent that they seek information other than ANI information and information concerning ANIs that were not Complainant's ANIs. For example, in document request 12, Complainant seeks "all documents gathered, created, and/or generated by Sprint as part of Sprint's assistance in the dialaround compensation process...including, but not limited to, any and all LEC verification records and/or lists of ANIs submitted by Sprint...". Similarly, in interrogatory 23, Complainant asks Defendants to describe the process by which Sprint assisted in the dialaround compensation process. In document request 15 and interrogatory 29, Complainant asks Defendants to provide and identify any and all documents regarding any communications with the National Payphone Clearinghouse regarding Complainant's ANIs. In its Motion to Compel, Complainant makes no argument, and there is none, as to how information or documents other than the identity of ANIs associated with Complainant's payphones is relevant to this case.

Defendants also object to these questions because they are duplicative. As demonstrated above, the only information that is relevant to these cases is the identity of the Complainant's ANIs. Complainant has already asked for, and Defendants have already provided, a list of the Complainant's payphone ANIs for which the Defendants provided service during the relevant time period.[1] Accordingly, these additional questions, which seek the same information previously provided to the Complainant, should be denied as duplicative.

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[1] Defendant's Answers to the First Set of Interrogatories of Complainant Ascom

Thus, Defendants ask that their objections to these questions be sustained. In the alternative, Defendants ask that the scope of these questions be limited to only require information and documents concerning the list of Complainant's payphone ANIs generated in connection with the dialaround compensation process during the relevant time period.

Interrogatory 33 and Document Request 17

The Complainant argues that the Defendants should be required to provide what it self-servingly styles "substantive, non-evasive" responses to Interrogatory No. 33 and Document Request No. 17 (Motion, pp. 1, 5 - 6). Complainant's Interrogatory No. 33 stated that

> [f]or each Request for Admissions contained in Complainant's First Set of Requests for Admission of Facts and Genuineness of Documents served in these proceedings that you denied, in whole or in part, set forth in detail the reasons for such denial, including an identification of any and all documents supporting such denials.

In response, the Defendants properly stated that "[t]he requests for admissions were answered in accordance with Section 1.246(b) of the Rules, which does not require the responding party to set forth (in detail or otherwise) the reasons why a given request is denied, or to identify any and all documents supporting such denial." Similarly, Document Request No. 17 sought

> [f]or each Request for Admissions contained in Complainant's First Set of Requests for Admission of Facts and the Genuineness of Documents served in these proceedings that you denied, in whole or in part, any and all documents supporting such denial.

The Defendants properly responded that "[t]he requests for admissions were answered in accordance with Section 1.246(b) of the Rules, which does not require the responding party to identify any and all documents supporting a denial."

Citing the language of Section 1.311(b) of the Rules, the Complainant argues that "Sprint cannot plausibly contend that evidence upon which Sprint may have relied in denying [Complainant's] requests is not 'relevant to the hearing issues' in these proceedings" (Motion, p. 6);

Communications, Inc. N/K/A Ascom Holding, Inc. (Filed August 29, 2001).

and, in an exercise in tortured logic, concludes that "[b]y denying a request, ... Sprint concedes that the subject matter of the request is 'relevant to the hearing issues' and, consequently, that evidence pertinent to Sprint's denial of the requested admission is also relevant" (Motion, p. 6) (emphasis in original).

Unfortunately for the Complainant, its legal theory has no foundation in the Commission's Rules. Nowhere does Section 1.246 of the Rules state (or even imply) that by denying a request for admission a party somehow concedes that the subject matter of the request is relevant to the hearing issues. And for good reason. Section 1.246(a) of the Rules expressly states that the proper scope of a request for admission is the "truth of any relevant matters of fact" (emphasis added) -- and questions of relevancy are issues of law, not of fact.

Equally as significant, Complainant's Interrogatory No. 33 and Document Request No. 17 lack the specificity required of proper interrogatories and document requests. To put the interrogatory and document request into proper perspective, the Complainant propounded 51 virtually identical admission requests to each of the three Defendants. Those 51 requests each relate to operations in three separate states (i.e., Florida, Pennsylvania and North Carolina),[2] thus effectively constituting some 153 distinct requests. Of these 51 admission requests, each of the three Defendants denied twenty-four (i.e., Admission Request Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48 and 51); and Defendant Carolina Telephone and Telegraph Company denied an additional two (i.e., Request Nos. 41 and 42). The admission requests denied by the Defendants encompassed a wide range of topics. Thus, the Complainant's Interrogatory No. 33 and Document Request No. 17 seek to telescope into one interrogatory and one

[2] The Complainant also requested information for South Carolina. However, the Defendants did not provide payphone service in South Carolina to the Complainant.

document request for each Defendant the separate and diverse subject matter of 24 to 26 separate admissions requests.

The Complainant's overly broad interrogatory and document request contravene the fundamental requirement that discovery requests be narrowly drafted and not overly burdensome. Thus, for example, Commission Rule 1.325(a) requires that requested documents be specifically "designated," a position reflected in the case law. The courts have held that blanket requests, such as the Complainant's, which request virtually everything are too general, and that the items requested must be described with "reasonable particularity." Tinder v. McGowan, 15 F.R. Serv. 1608 (W.D. PA 1970); 1970 U.S. Dist. LEXIS 9009; Frank v. Tinicum Metal Co., 11 F.R.D. 83 (E. D. PA 1950); 1950 U.S. Dist. LEXIS 3544. See also Hare v. Southern Pacific Co., 9 F.R.D. 307 (N.D. NY 1949); 1949 U.S. Dist. LEXIS 3204 (party could not simply request inspection of "all reports, investigations, and statements" relative to accident); United States v. Schine Chain Theatres, Inc., 2 F.R.D. 425 (W.D. NY 1942); 1942 U.S. Dist. LEXIS 1742 (request for every writing within party's possession relevant to transactions between it and others over a period of years not a sufficient designation); Vendola Corp. v. Hershey Chocolate Corp., 1 F.R.D. 359 (S.D. NY 1940); 1940 U.S. Dist. LEXIS 1949 (seeking "all books, documents, papers and records which are relevant and relate to the subject matter of the examination before trial" held not to comply with the requirement that documents be designated); Connecticut Importing Co. v. Continental Distilling Corp., 1 F.R.D. 190 (D. Conn. 1940); 1940 U.S. Dist. LEXIS 1887 (seeking production of all statements over a period of years). Blanket requests, such as those propounded by the Complainant, are objectionable as being unnecessarily oppressive and burdensome. Flickinger v. Aetna Casualty & Surety Co., 37 F.R.D. 533 (W.D. PA 1965); 1965 U.S. Dist. LEXIS 9960.

Similarly, interrogatories must be narrowly tailored; and interrogatories, such as that propounded by the Complainant, which are too general and all inclusive need not be answered. Stovall v. Gulf & South American S.S. Co., 30 F.R.D. 152 (S.D. TX 1961); 1961 U.S. Dist. LEXIS 3994. See also Savannah Theater Co. v. Lucas & Jenkins, 10 F.R.D. 461 (N.D. GA 1943); 1943 U.S. Dist. LEXIS 3061 (interrogatories asking whether motion picture distributors entered into any contracts "with producers or other distributor of films" were too broad).

Interrogatory and document requests, such as those propounded by the Complainant, which attempt to consolidate into one item a broad array of topics spanning some 24 to 26 separate admission requests are quite simply not specific and narrowly tailored, as required by the governing legal standards.

In addition, it cannot be seriously argued that the Defendants' responses in any way prejudiced the Complainant. With the possible exception of Admission Request Nos. 44 and 45 (which requested admissions regarding New York City Telecommunications, Inc. and Millicom Services Company, companies which are not even parties to these three cases), the 24 to 26 admission requests sought the same information requested by Complainant in its various individualized interrogatories and document requests in this case. Given this background, there is no question that Interrogatory No. 33 and Document Request No. 17 are unduly burdensome and oppressive, requesting yet again (as they do) information that the Complainant has requested elsewhere. This is the epitome of discovery designed to harass or oppress a party opponent. cf. Stonybrook Tenants Ass'n. v. Alpert, 29 F.R.D. 165 (D. Conn. 1961); 1961 U.S. Dist. LEXIS 5288. Furthermore, even assuming for purposes of argument that the Complainant could successfully parse the words of, or otherwise pick apart, its other interrogatories and document requests in an attempt to show narrow areas that it did not previously cover (and which, therefore, could be

characterized as unique to Interrogatory No. 33 and Document Request No. 17), these showings would be of no assistance to the Complainant here. This is so because the Commission's Rules impose no numerical limit on the number of interrogatories or document production requests that a party may propound; and it was incumbent upon the Complainant to propound interrogatories and document requests that met the specificity requirements discussed above.

Interrogatories 3 and 4

Although the Defendants answered interrogatories 3 and 4, Complainant is not satisfied with the answers and argues that Defendants should be directed to provide "non-evasive and meaningful answers" to these interrogatories. Complainant's Interrogatory 3 asked Defendants to explain the meaning of "previous balance" on telephone bills, including whether such entries reflect and/or indicate the outstanding charges that remain unpaid from previous telephone bills sent by Defendants for the same telephone lines. The Defendants answered by stating that "previous balance" means what it says and that it does not necessarily reflect and/or indicate the outstanding charges that remain unpaid from previous telephone bills sent by Defendants for the same telephone lines.

Complainant's Interrogatory 4 asked Defendants to explain the meaning of an amount of zero next to the "previous balance" entry on a telephone bill, including whether this reflects and/or indicates that all charges reflected on the previous bill sent by the Defendants for the same telephone lines have been paid. The Defendants answered by stating that "zero" means what it says and that it does not necessarily reflect and/or indicate that all charges reflected on the previous bill sent by Defendants for the same telephone lines have been paid.

In its Motion to Compel, the Complainant essentially argues that the Defendants' answers are not "meaningful" and that they are "evasive" because the Defendants did not provide the

answer sought by Complainant. Thus, Complainant makes the self serving and unsupported statement that a zero balance "ordinarily signifies that previous bills have been paid and, consequently, that nothing is owed." Complainant then argues that it is entitled to know whether the Defendants followed some other practice. Finally, Complainant states that the "previous balance" entries constitute admissions by the Defendants on the issue of whether Ascom paid the EUCL charges assessed by the Defendants.

Complainant's Motion to Compel, therefore, comes down to an argument that the Defendants should answer whether a zero balance means that previous bills have been paid. Defendants have answered this question by stating that a zero balance does not necessarily mean that all charges have been paid. Accordingly, Complainant's interrogatories 3 and 4 have been answered and Complainant's motion on these questions should be denied.

Interrogatories 8, 20 and 21 and Document Request 5

Finally, Complainant asks that Defendants be compelled to answer interrogatories 8, 20 and 21 and document request 5. Interrogatory 8 and document request 5 ask Defendants to identify and provide any documents regarding any instances when a premises owner paid the Defendants a recurring fee or other compensation for providing a payphone on the premises owner's premises. Interrogatory 20 asks the Defendants to identify their payphones located in airports that had semi-public telephone service. And, interrogatory 21 asks the Defendants to identify their payphones located in pizza parlors or gas stations that had public telephone service. Complainant argues that these questions seek information that is relevant to determining the ratio of Defendants' public to semi-public payphones.

Interrogatories 8, 20 and 21 and document request 5 are essentially variants of the same questions asked and responded to by Defendants in the first set of interrogatories numbers 20 and

21. Accordingly, Defendants will supplement their Answers to the Second Document Production Request and Second Set of Interrogatories by adding their answer to interrogatory 20 and 21 in the first set of interrogatories to interrogatories 8, 20 and 21 and document request 5 in the second set of interrogatories and document requests.

Respectfully submitted,

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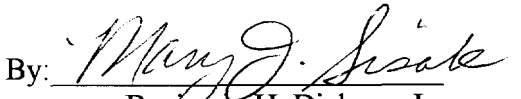
By: 

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Dated: September 5, 2001

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2001 a copy of the foregoing was served by first-class United States mail, postage prepaid, on the following parties:

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